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DEPARTMENT OF MANAGED HEALTH CARE
By Cama Burns
Filing Clerk

Attorneys for Complainant

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
IN AND FOR THE STATE OF CALIFORNIA

IN THE MATTER OF:) OAH Case No.:
Sandy Rosales) Enforcement Matter No.: 10-211
Respondent.) **CEASE AND DESIST ORDER**

**To: Sandy Rosales
20604 Pioneer Blvd.
Lakewood, CA 90715**

The Director of the Department of Managed Health Care, by and through her designee,
Assistant Chief Counsel Patricia Sturdevant, after investigation, determines, as follows:

I.

PARTIES

1. The Director of the Department of Managed Health Care is vested with the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975, as amended (Knox-Keene Act), in order to promote the delivery and quality of health and medical care to the people of California who enroll in health care service plans. (Health & Saf. Code, § 1340 et seq.)
2. Sandy Rosales is an individual believed to reside in Lakewood, California. Ms. Rosales is an insurance agent licensed by the California Department of Insurance, License Number OF64042. In her capacity as an insurance agent, Ms. Rosales solicits business for health care service plans licensed under the Knox-Keene Act, including targeting and soliciting elderly Californians for Medicare Advantage plans offered by such health care service plans.

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II.

STATUTORY AUTHORITY

3. The Director's powers conferred by the Legislature include prosecuting malefactors who make fraudulent solicitations or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice of health plans for the consumer public. (Health & Saf. Code, § 1342(c).)

4. The Knox-Keene Act specifically prohibits deceptive solicitations by solicitors. No solicitor, solicitor firm, or representative shall use, or permit the use of, any advertising or solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. (Health & Saf. Code, § 1360.)

5. The Director may, after appropriate notice and opportunity for hearing, take disciplinary action against a solicitor if the Director determines that the person has committed any of the acts or omissions constituting grounds for disciplinary action. (Health & Saf. Code, § 1388.)

6. Grounds for disciplinary action against a solicitor exist when a solicitor has violated or attempted to violate any provision of the Knox-Keene Act or any rule or regulation adopted by the Director pursuant to her authority under the Knox-Keene Act. (Health & Saf. Code, § 1388(b)(2).)

7. Grounds for disciplinary action against a solicitor also exist when a solicitor has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code. (Health & Saf. Code, § 1388(b)(3).)

III.

FACTUAL BACKGROUND

8. Medicare Advantage plans are also known as Medicare Part C. Medicare Advantage plans are sponsored by Medicare, which pays private insurance companies to provide health services to beneficiaries who enroll in these plans. An individual who enrolls in a Medicare Advantage plan receives all Medicare-covered benefits through the private Medicare Advantage plan as opposed to traditional fee for service under Medicare Part A and Medicare Part B.

9. Ms. Rosales disseminates information about Medicare Advantage plans to individuals who are eligible for Medicare for the specific purpose of inducing them to enroll in an offered plan.

10. One location at which Ms. Rosales solicits individuals to enroll in Medicare Advantage plans is 2740 S. Bristol Avenue, Santa Ana, California.

11. Ms. Rosales uses deceptive and misleading solicitation tactics to attempt to persuade elderly individuals into enrolling in an offered Medicare Advantage plan.

13. Ms. Rosales places two large signs depicting an oversized Medicare beneficiary card and a Medi-Cal beneficiary card near the area in which she markets Medicare Advantage plans. Use of this sign suggests and implies that Ms. Rosales is a Medicare and/or a Medi-Cal representative.

IV.

FINDINGS

The Director finds:

14. Ms. Rosales' use of signs depicting oversized Medicare and Medi-Cal beneficiary cards suggests and implies that Ms. Rosales is a Medicare and/or a Medi-Cal representative. Therefore, Ms. Rosales' use of signs depicting oversized Medicare and Medi-Cal beneficiary cards is a deceptive solicitation method and constitutes dishonest dealing in violation of Health and Safety Code sections 1360 and 1388(b)(2) and (3) .

ORDER

THEREFORE, the Director of the Department of Managed Health Care, by and through her designee, Assistant Chief Counsel Patricia Sturdevant, pursuant to Health and Safety Code section 1388, **ORDERS AS FOLLOWS:**

1. In soliciting individuals to enroll in Medicare Advantage plans, Sandy Rosales shall cease and desist from utilizing a sign that depicts a Medicare beneficiary card.

Dated: June 10, 2010

CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE

By: Patricia Sturdevant
PATRICIA STURDEVANT
Assistant Chief Counsel